UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SEATTLE DIVISION

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| MARLI ANAIS WALKER, individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>I.Q. DATA INTERNATIONAL, INC. and JOHN DOES 1-25,<br><br>Defendants. | Civil Case No. 2:16-cv-01976<br><br>COMPLAINT—CLASS ACTION<br><br>DEMAND FOR JURY TRIAL |

Plaintiff MARLI ANAIS WALKER (hereinafter, "Plaintiff"), a resident of the State of Washington, brings this class action complaint by and through her attorney, Ryan M. Pesicka, against Defendant I.Q. DATA INTERNATIONAL, INC. and JOHN DOES 1-25 (hereinafter collectively, "Defendant"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

## INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the FDCPA in 1977 in response to the "abundant evidence of the use of

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abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a). At that time, Congress was concerned that "abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy." *Id.* Congress concluded that "existing laws . . . [we]re inadequate to protect consumers," and that "the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices." 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to "insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

3. The rights and obligations established by section 15 U.S.C. § 1692g were considered by the Senate at the time of passage of the FDCPA to be a "significant feature" of the Act. See *S. Rep. No. 382, 95th Cong., 1st Sess. 4, at 4, reprinted in 1977 U.S.C.C.A.N. 1695, 1696.*

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

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## NATURE OF THE ACTION

6. Plaintiff brings this class action on behalf of a class of Washington consumers seeking redress for Defendant's actions of using an unfair and unconscionable means to collect a debt.

7. Defendant's actions violated § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA") which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

8. Plaintiff is seeking damages, and declaratory and injunctive relief.

## PARTIES

9. Plaintiff is a natural person and a resident of the State of Washington, and is a "Consumer" as defined by 15 U.S.C. §1692(a)(3).

10. Defendant is a collection agency with its principal office located at 1010 Southeast Everett Mall Way, Suite 100, Everett, Washington 98208.

11. Upon information and belief, Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

12. Defendant is a "debt collector," as defined under the FDCPA under 15 U.S.C. § 1692a(6).

13. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

## CLASS ALLEGATIONS

14. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter, "FRCP") Rule 23, individually and on behalf of the following consumer class

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(the "Class"):

> All consumers who have an address in the State of Washington who received an initial collection letter from the Defendant attempting to collect a consumer debt, that fails within five days of the initial communication to send the consumer a written validation notice pursuant to 15 U.S.C. § 1692g.

15. The Class period begins one year to the filing of this Action.

16. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons (*see* **Exhibit A,** except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2, partially redacted the financial account numbers in an effort to protect Plaintiff's privacy);
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
    - a.) Whether Defendant violated various provisions of the FDCPA;
    - b.) Whether Plaintiff and the Class have been injured by Defendant's conduct;
    - c.) Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

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d.) Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed to proceed without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.
- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief

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with respect to the Class as a whole.

**ALLEGATIONS OF FACT**

17. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

18. Some time prior to June 30, 2016, an obligation was allegedly incurred to Fultons Crossing ("FC").

19. The FC obligation arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.

20. The alleged FC obligation is a "debt" as defined by 15 U.S.C.§ 1692a(5).

21. FC is a "creditor" as defined by 15 U.S.C.§ 1692a(4).

22. Defendant contends that the FC debt is past due.

23. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Service, telephone and internet.

24. FC directly or through an intermediary contracted the Defendant to collect the alleged debt.

25. On or about June 30, 2016, the Defendant caused to be delivered to the Plaintiff a collection letter in an attempt to collect the alleged FC debt. *See* **Exhibit A**.

26. Upon information and believe, the June 30, 2016 letter was the first communication between the Defendant and Plaintiff with regards to the FC debt.

27. The June 30, 2016 letter was sent or caused to be sent by persons employed by Defendant as a "debt collector" as defined by 15 U.S.C. §1692a(6).

28. The June 30, 2016 letter is a "communication" as defined by 15 U.S.C. §1692a(2).

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29. The Defendant's June 30, 2016 letter does not notify the consumer of her right to dispute the alleged debt pursuant to 15 U.S.C. §1692g.

30. Within five days of the June 30, 2016 letter the Defendant does not notify the consumer of her right to dispute the alleged debt pursuant to 15 U.S.C. §1692g.

31. Pursuant to 15 U.S.C. §1692g(b), if a consumer was to notify the debt collector within thirty (30) days of receipt of the communication from a debt collector, a debt collector must cease all collection efforts until they are able to verify the debt.

32. By failing to notify the consumer of her right to dispute the alleged debt, the Defendant caused a real risk of real harm associated with the Defendant's deceptive and misleading collection practices.

33. Congress adopted the debt validation provisions of section 1692g to guarantee that consumers would receive adequate notice of their rights under the FDCPA. *Wilson*, 225 F.3d at 354, citing *Miller v. Payco–General Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir.1991).

34. Congress further desired to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." S.Rep. No. 95–382, at 4 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1699.

35. The rights afforded to consumers under Section 1692g(a) are amongst the most powerful protections provided by the FDCPA.

36. Once a consumer makes a timely, written notice of dispute to the debt collector, the debt collector is required by law to cease collection of the account until verification of the debt is obtained.

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37. In enacting the FDCPA, the Senate addressed collection abuses they observed, specifically from debt collectors who would obtain "information about a consumer through false pretense . . ." To end these abuses, Congress gave consumers the right to be informed that the entity contacting them is a debt collector. *See* 15 U.S.C. § 1692e(11).

38. Said June 30, 2016 letter states in part:

"Your balance reported is $3061.37."

39. Upon information and belief, due to interest, late fees, or other charges that were accruing daily, the current balance on the date that the Plaintiff received the letter was greater than the current balance listed on the June 30, 2016 letter.

40. Furthermore, the Defendant failed to notify the Plaintiff on the June 30, 2016 letter that interest, late fees, or other charges were accruing.

41. By doing so, Defendant falsely misrepresented the amount of the debt.

42. On July 19, 2016, Defendant sent a subsequent letter, this time with the required 15 U.S.C. §1692g validation notice. See **Exhibit B**.

43. The validation notice on the July 19, 2016 letter incorrectly states that the Plaintiff had thirty (30) days from the receipt of the July 19th letter to dispute the debt, when in reality the FDCPA only grants a consumer the right to dispute within thirty (30) days from receipt of the initial communication.

## COUNT I

## VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
## 15 U.S.C. §1692e *et seq.*

44. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

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45. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

46. Defendant violated said section by:

- Falsely representing the amount of the debt in violation of §1692e(2)
- Making a false and misleading representation in violation of §1692e(10)

47. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e *et seq*. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

**COUNT II**

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

**15 U.S.C. §1692g *et seq.***

48. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

49. Defendant's debt collection efforts attempted and/or directed towards Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

50. The Defendant violated said section by:

- Failing to within five days of the initial communication provide the validation notice to the consumer in writing
- Failing to accurately state the amount of the debt in violation of §1692g(a)(1)

51. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692g *et seq*. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

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## PRAYER FOR RELIEF

**WHEREFORE,** Plaintiff demands judgment against Defendant as follows:

(a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and Ryan M. Pesicka, as Class Counsel;

(b) Awarding Plaintiff and the Class statutory damages;

(c) Awarding Plaintiff and the Class actual damages;

(d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;

(e) Awarding pre-judgment interest and post-judgment interest; and

(f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

DATED December 28, 2016.

Respectfully submitted,

CONCORD LAW, P.C.

By: s/Ryan M. Pesicka

Ryan M. Pesicka, WSBA 48182
144 Railroad Ave., Ste. 236
Edmonds, WA 98020
Ryan@ConcordLawSeattle.com
(206) 512-8029 F: (206) 512-8914
*ATTORNEY FOR PLAINTIFF*

## DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

DATED December 28, 2016.